

A. G. Contract No. KR01-0151TRN
ADOT ECS File: JPA 00-202
Project: STP-504-6(5)P
TRACS: 0940 MA MES SR157 01C
Section: Broadway Road @
Railroad Crossing
AAR/DOT No. 741-657-R

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF MESA

THIS AGREEMENT is entered into 17 May, 2001, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF MESA, acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.
3. Congress has authorized appropriations for the erection of automatic warning signals, automatic gate arms, plank crossings, pavement markings, and other appurtenances.
4. Such project within the boundary of the City has been selected by the City; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration ("FHWA") for its approval.
5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

NO. 24622
Filed with the Secretary of State
Date Filed: 5/17/01
Betsy Boylen
Secretary of State
By: A. Martin

6. The work embraced in this agreement and the estimated cost are as follows: Upgrade Railroad Crossing (Broadway Road).

Preliminary and Construction Engineering	\$ 7,000.00
Furnish and install Concrete Crossing Surface (by railroad forces)	\$ 95,033.00
Total Project	=\$112,033.00
Federal Aid Funds @ 94.3% of \$156,036.00	=\$105,647.00
City of Mesa Funds	=\$ 6,386.00

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will authorize the Railroad Company to proceed with the work covered by the State-Railroad Agreement and will request the maximum federal funds available.

b. Should some unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in excess of the amount of the City's deposit unless and until so authorized in writing by the City.

2. The City shall acquire the necessary right-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired.

3. Once acquired, the City shall remove from the City right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been or will be removed therefrom.

4. The City shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the City right of way. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use.

5. Upon completion of construction, the City shall provide maintenance (exclusive of maintenance by the Railroad Company of its facilities), which may include, but is not limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

6. The City shall mark and sign railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, within 45 days after the railroad has completed its work; failing that, the State may proceed with the marking and signing thereof, the cost of which shall be borne by the City.

7. By such regulation as it may by ordinance provide, the City shall regulate parking and not permit vehicles to be left on the street in any manner other than at and parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement, nor for any resulting construction project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. Such assumption of the responsibility by the City for the benefit of the State in no way acts as a waiver by the City for the benefit of the railroad company or any responsibility the railroad company has in the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost overruns and construction claims. The City shall require its contractors to name the State as an additional insured in the contractor's insurance policies. The City shall also require its contractors to name the State as an additional indemnitee in the City's contracts with its contractors. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation and attorneys' fees.

2. The cost of the design, construction and construction engineering work covered by this agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, the City agrees to furnish and provide the State with City funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work herein embraced; provided, however, that any provisions in this agreement for maintenance shall be perpetual, unless assumed by another competent governmental entity.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007


City of Mesa
City Manager
P. O. Box 1466
Mesa, AZ 85211-1466

9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF MESA

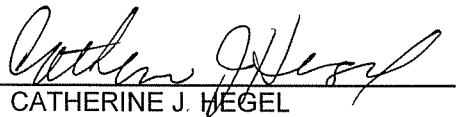
By


MICHAEL HUTCHINSON
City Manager

STATE OF ARIZONA

Department of Transportation

By


CATHERINE J. HEGEL
Contract Administrator

ATTEST:

By


BARBARA JONES
City Clerk

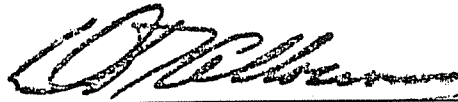
JPA 00-202.doc
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RESOLUTION

BE IT RESOLVED on this 12th day of December 2001, that I, the undersigned MARY E. PETERS, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Intermodal Transportation Division, to enter into an agreement with the City of Mesa, for the purpose of defining responsibilities for the acquisition of federal funds, upgrading the railroad crossing at Broadway Road, Project # STP-504-6-(5)P.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Contract Administrator for approval and execution.

A handwritten signature in black ink, appearing to read 'D. Allocco', is written over a horizontal line.

DAVID R. ALLOCCO, P.E.
Assistant State Engineer
Engineering Technical Group

for MARY E. PETERS, Director

APPROVAL OF THE CITY OF MESA ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF MESA and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 17th day of April, 2001.

Neal Beets
NEAL BEETS, City Attorney

RESOLUTION NO. 7645

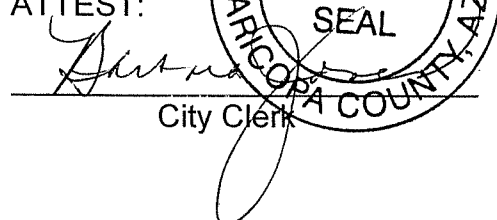
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE STATE OF ARIZONA DEPARTMENT OF TRANSPORTATION AND THE CITY OF MESA FOR IMPROVEMENTS TO THE BROADWAY ROAD RAILROAD CROSSING JUST WEST OF CENTER STREET.

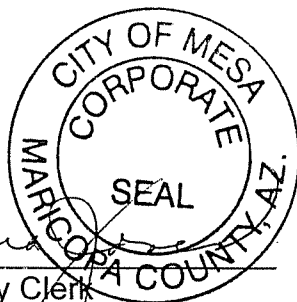
BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, AS FOLLOWS:

Section 1: That the cost sharing agreement between the State of Arizona Department of Transportation and the City of Mesa for improvements to the Broadway Road Railroad Crossing just west of Center Street; is hereby approved.

Section 2: That the City Manager, Michael T. Hutchinson, or his designated representative, is authorized and directed to execute the agreement on behalf of the City of Mesa, and the City Clerk is authorized and directed to attest to the signature of the City Manager or his authorized designated representative thereon.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 16th day of April, 2001.

ATTEST:

City Clerk



APPROVED:


Mayor



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX, AZ. 85007-2926

JANET NAPOLITANO
ATTORNEY GENERAL

TRN Main: (602) 542-1680

Direct: (602) 542-8837

Fax: (602) 542-3646

MAIN PHONE: (602) 542-5025

FACSIMILE: (602) 542-4085

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR01-0151TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED May 3, 2001.

JANET NAPOLITANO
Attorney General

JAMES R. REDPATH
Assistant Attorney General
Transportation Section

JRR:ggt

Enc.

681810



Arizona Department of Transportation

Intermodal Transportation Division

205 South Seventeenth Avenue Phoenix, Arizona 85007-3213

Janet Napolitano
Governor

Victor M. Mendez
Director

December 29, 2003

Bill Higgins
*Acting State
Engineer*

Mr. Ron Lisonbee
City of Mesa
Engineering
P.O. Box 1466
Mesa, Arizona 85211-1466

Reference:

A. G. Contract No. KR01-0151TRN
ADOT ECS File: JPA 00-202-**Amendment 1**
Project: STP-504-6(5)P
TRACS: 0940 MA MES SR157 01C
Section: Broadway Road @
Railroad Crossing
AAR/DOT No. 741-657-R

Dear Mr. Lisonbee:

Enclosed please find one fully conformed executed original of the above referenced agreement. Should you have any questions, please do not hesitate to call at the number provided below.

Sincerely,

Shannon L. Childs
Joint Projects Coordinator
Engineering Consultants Section
(602) 712-7125
schilds@dot.state.az.us

cc: John Syers



A. G. Contract No. KR01-0151TRN
ADOT ECS File: JPA 00-202-**Amendment 1**
Project: STP-504-6(5)P
TRACS: 0940 MA MES SR157 01C
Section: Broadway Road @
Railroad Crossing
AAR/DOT No. 741-657-R

AMENDMENT NO. ONE (1)

INTERGOVERNMENTAL AGREEMENT
THE ARIZONA DEPARTMENT OF TRANSPORTATION
AND
THE CITY OF MESA

THIS AMENDMENT is entered into 23 December 2003, **Amendment Number 1** to JPA 00-202, AG Contract No.: KR01-0151TRN, filed 17 May, 2001, filed with the Secretary of State under No. 24622, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF MESA, acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this agreement has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.

THIS AGREEMENT IS AMENDED to include additional approach roadway work the City requests be included in the referenced project.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

NO. 24622 #01
Filed with the Secretary of State
Date Filed: 12/23/03

Janice K. Brewer
Secretary of State

By: Vincent J. Guenzewald

I. Recital 6. is replaced as follows:

6. The work embraced in this agreement and the estimated costs are amended as follows: Upgrade Railroad Crossing and Approach Roadway Work (Broadway Road).

Estimated Preliminary and Construction Engineering	\$ 10,000.00
Furnish and install Concrete Crossing Surface and Approach Roadway Work (by railroad forces)	<u>\$166,880.00</u>
Total Project	\$176,880.00

Estimated Federal Aid Funds @ 94.3% of \$176,880.00	<u>\$166,798.00</u>
Estimated City of Mesa Funds	\$ 10,082.00

All other terms and conditions of the original Agreement remains in full force and effect.

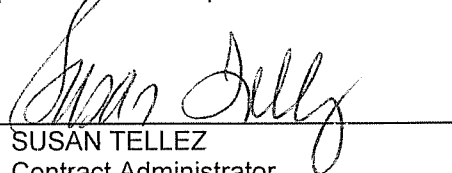
IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF MESA

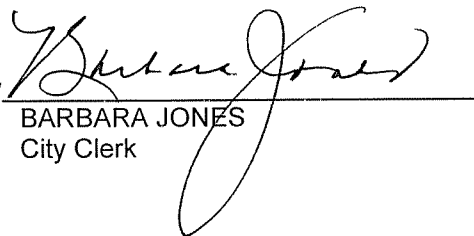
By 
MICHAEL HUTCHINSON
City Manager

STATE OF ARIZONA

Department of Transportation

By 
SUSAN TELLEZ
Contract Administrator

ATTEST:

By 
BARBARA JONES
City Clerk



RESOLUTION NO. 8135

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO AN EXISTING INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF ARIZONA DEPARTMENT OF TRANSPORTATION AND THE CITY OF MESA FOR IMPROVEMENTS TO THE BROADWAY ROAD RAILROAD CROSSING JUST WEST OF CENTER STREET.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESA,
MARICOPA COUNTY, AS FOLLOWS:

Section 1: That Amendment #1 to the existing Intergovernmental Agreement for the cost sharing between the State of Arizona Department of Transportation and the City of Mesa for improvements to the Broadway Road Railroad Crossing just west of Center Street; is hereby approved.

Section 2: That the City Manager, Michael T. Hutchinson, or his designated representative, is authorized and directed to execute the agreement on behalf of the City of Mesa, and the City Clerk is authorized and directed to attest to the signature of the City Manager or his authorized designated representative thereon.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 3rd day of November, 2003.



APPROVED:

Reno Hawker
Mayor

ATTEST:

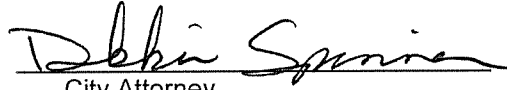
Barbara Jones
City Clerk

APPROVAL OF THE CITY OF MESA ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF MESA and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 10th day Nov 2003.


City Attorney



TERRY GODDARD
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TRANSPORTATION SECTION
WRITER'S DIRECT NO: 602.542.8837

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR01-0151-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

Date: 15 December 2003

Terry Goddard
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read "James R. Redpath", is written over a horizontal line.

James R. Redpath
Assistant Attorney General
Transportation Section

JRR:djd:780214